



**BellSouth Telecommunications, Inc.**

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Nashville, TN 37201-3300

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**Joelle J. Phillips**

Attorney

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July 26, 2001

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Second Complaint of Discount Communications, Inc. Against  
BellSouth Telecommunications, Inc.*  
Docket No. 00-01151

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Amended Notice Regarding Breach of Escrow Arrangement and Intention to Terminate Service. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Joelle Phillips

JP/jej

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**Nashville, Tennessee**

**In Re:           *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.***

**Docket No. 00-01151**

**AMENDED NOTICE REGARDING BREACH OF ESCROW ARRANGEMENT**  
**AND INTENTION TO TERMINATE SERVICE**

BellSouth Telecommunications, Inc. ("BellSouth") provides this amended notice concerning breach of escrow arrangement and intention to terminate service and respectfully shows the Hearing Officer as follows:

1.     On January 31, 2001, a status conference was held regarding the above-referenced matter. At that status conference, BellSouth confirmed that it would provide five days notice to the Hearing Officer prior to terminating service in the event that Discount Communications, Inc. ("Discount") failed to make payments in breach of the escrow agreement between Discount and BellSouth.

2.     On Wednesday, July 25, 2001, BellSouth provided Discount with notice that Discount had failed to make the required escrow payments during a period beginning March 31, 2001 through June, 2001. BellSouth attached to that correspondence documentation concerning the deposits to the escrow account made by Discount during that period. That documentation is attached to this Notice as Exhibit "A" (original of Affidavit of Kim Sands was filed on July 25, 2001). As reflected in that documentation, Discount failed to make eight of its required payments in April, failed to make eleven of its required payments in May,

and failed to make thirteen of its required payments in June. The shortfall created by the failure to pay during this period is \$89,600. (This figure was incorrectly reported as \$92,400 in BellSouth's original filing. The correction of this figure is the sole purpose of this amended filing).

3. For the reasons articulated above, BellSouth respectfully provides this notice as agreed at the status conference on January 31, 2001 (transcript excerpt attached as Exhibit "B") in order to provide the Hearing Officer time to consider pending motions. BellSouth intends to terminate service to Discount in five days as a result of the breach of escrow agreement. In the event of such termination, BellSouth continues to be willing to voluntarily agree to accept Discount's customers in the manner outlined on page seven of BellSouth's Response to Discount Communications' Motion to Request BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding (copy attached as Exhibit "C").

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks

Joelle J. Phillips

333 Commerce Street, Suite 2101

Nashville, Tennessee 37201-3300

(615) 214-6301

### CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, Conners & Berry  
Post Office Box 198062  
Nashville, Tennessee 37219-8062

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Tim Phillips, Esquire  
Consumer Advocate Division  
Post Office Box 20207  
Nashville, Tennessee 37202

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Vance Broemel, Esquire  
Consumer Advocate Division  
Post Office Box 20207  
Nashville, Tennessee 37202

A handwritten signature in cursive script, appearing to read "Tim Phillips", written over a horizontal line.

**EXHIBIT "A"**

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

**In Re:       *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.***

**Docket No. 00-01151**

**AFFIDAVIT OF KIMBERLY E. SANDS**

**STATE OF TENNESSEE:**

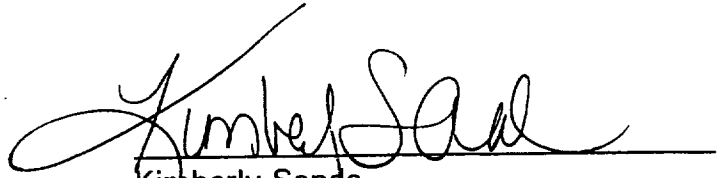
**COUNTY OF SHELBY:**

Personally appeared before me, the undersigned Notary Public in and for said State and County, Kimberly E. Sands, who has been duly sworn to state the following:

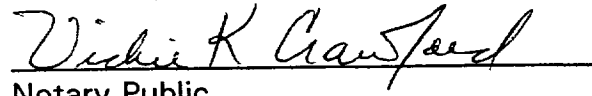
1. My name is Kimberly Sands. I am an adult who makes this Affidavit upon my oath and personal knowledge.
2. I am an attorney with the law firm of Waring Cox, PLC.
3. In connection with the bankruptcy case of ATM Discount Communications and the above captioned proceedings, Waring Cox established an escrow account into which ATM was to deposit funds. Waring Cox monitors the escrow account established at First Tennessee Bank under account number 101137177.
4. Attached to this affidavit is a calendar summary of deposits made by ATM for the period of March 31, 2001 through June 30, 2001.

5. Based on information provided to me by First Tennessee, it does not appear that ATM has complied with the TRA's order of March 22, 2001, which required ATM to make daily deposits of \$2,800.00 into the escrow account..

FURTHER AFFIANT SAITH NOT.

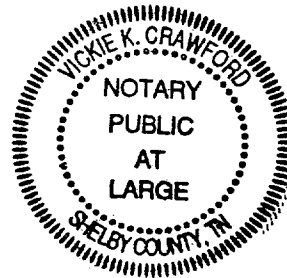
  
Kimberly Sands

SWORN TO AND SUBSCRIBED before me this 23rd day of July, 2001.

  
Notary Public

My Commission Expires:

6-13-2004



APRIL, 2001				Total deposits: Number of week days without any payment: 8	\$64,400
Monday	Tuesday	Wednesday	Thursday	Friday	
2 \$2800 deposit (Saturday, 3/31) \$2800 deposit (Sunday) <b>No Payment for Monday</b> \$5600 TOTAL	3 \$2800 deposit	4 \$2800 deposit	5 \$2800 deposit	6 \$2800 deposit	
9 \$2800 deposit (Saturday) \$2800 deposit (Sunday) <b>No Payment for Monday</b> \$5600 TOTAL	10 \$2800 deposit	11 <b>No Payment for Wednesday</b>	12 \$2800 deposit	13 \$2800 deposit	
16 \$2800 deposit (Saturday) <b>No Payment for Sunday</b>	17 \$2800 deposit (Monday) \$2800 deposit (Tuesday) \$8000 (prepetition) \$5600 TOTAL	18 <b>No Payment for Wednesday</b>	19 \$2800 deposit	20 \$2800 deposit	
23 \$2800 deposit (Saturday) \$2800 deposit (Sunday) <b>No Payment for Monday</b> \$5600 TOTAL	24 \$2800 deposit	25 <b>No Payment for Wednesday</b>	26 \$2800 deposit	27 \$2800 deposit	
30 \$2800 deposit (Saturday) \$2800 deposit (Sunday) <b>No Payment for Monday</b> \$5600 TOTAL					



MAY, 2001				Total deposits: Number of week days without any payment: 11	\$56,000
Monday	Tuesday	Wednesday	Thursday	Friday	
	1 \$2800 deposit	2 \$2800 deposit	3 \$2800 deposit	4 No Payment for Friday	
7 \$2800 deposit \$2800 deposit \$2800 deposit \$8400 TOTAL	8 No Payment for Tuesday	9 \$2800 deposit	10 Paid Friday 5/11	11 \$2800 deposit (Thursday) \$2800 deposit (Friday) \$5600 TOTAL	
14 No Payment for Saturday No Payment for Sunday No Payment for Monday	15 \$2800 deposit	16 \$2800 deposit	17 \$2800 deposit	18 \$2800 deposit	
21 \$2800 deposit (Saturday) No Payment for Sunday	22 \$2800 deposit (Monday) \$2800 deposit (Tuesday) \$5600 TOTAL	23 No Payment for Wednesday	24 Paid Friday 5/25	25 \$2800 deposit (Thursday) \$2800 deposit (Friday) \$5600 TOTAL	
28 No Payment for Saturday No Payment for Sunday No Payment for Monday	29 \$2800 deposit	30 No Payment for Wednesday	31 \$2800 deposit		

JUNE, 2001				Total deposits: Number of week days without any payment:		\$44,800
Monday	Tuesday	Wednesday	Thursday	Friday		
				1 \$2800 deposit		
4 \$2800 deposit (Saturday) No Payment for Sunday No Payment for Monday	5 \$2800 deposit	6 No Payment for Wednesday	7 \$2800 deposit	8 \$2800 deposit		
11 \$2800 deposit (Saturday) No Payment for Sunday No Payment for Monday	12 \$2800 deposit	13 \$2800 deposit	14 No Payment for Thursday	15 \$2800 deposit		
18 No Payment for Saturday No Payment for Sunday No Payment for Monday	19	20 \$2800 deposit (Tuesday) \$2800 deposit (Wednesday) \$5600 TOTAL	21 No Payment for Thursday	22 \$2800 deposit		
25 \$2800 deposit (Saturday) \$2800 deposit (Sunday) No Payment for Monday \$5600 TOTAL	26 No Payment for Tuesday	27 \$2800 deposit	28 \$2800 deposit	29 No Payment for Friday		
30 No information provided						

**EXHIBIT "B"**

COPY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

SECOND COMPLAINT OF DISCOUNT  
COMMUNICATIONS AGAINST BELLSOUTH  
TELECOMMUNICATIONS, INC.

)  
)  
) DOCKET NO.  
) 00-01151  
)

TRANSCRIPT OF PROCEEDINGS

Wednesday, January 31, 2001

APPEARANCES:

For BellSouth:

Mr. Guy M. Hicks

For Discount  
Communications:

Mr. Henry Walker

For Consumer Advocate:

Mr. Vance L. Broemel



NASHVILLE COURT REPORTERS

P.O. Box 290903  
Nashville, TN 37229-0903  
(615) 885-5798

Reported by:

Donna J. McWhorter, RPR, CCR

NASHVILLE COURT REPORTERS (615) 885-5798

1 issue an order on the matter.

2 MR. WALKER: I guess, then, we can be  
3 assured that until such time as you issue a ruling on  
4 the matter, that as long as we keep paying our escrow  
5 payments, service will continue?

6 MR. BROEMEL: Yeah, we'd like to get  
7 that cleared up too, because that's one of our  
8 concerns, is if service is discontinued, what happens  
9 to the customers. I know the TRA itself, the  
10 directors, expressed that. So if this mediation --  
11 these dates change any of that, we'd like to know that.

12 HEARING OFFICER: I don't know that  
13 the dates will change anything, but if there's a breach  
14 of the escrow agreement, I would like five days to be  
15 able to act on the pending motions.

16 MR. HICKS: We have no objection to  
17 that.

18 MR. BROEMEL: When would the directors  
19 look at it? We're concerned with, you know, having  
20 this -- really, I think there's a number of issues here  
21 that just haven't been addressed because we're not  
22 there yet, so, I mean, if they breach the agreement and  
23 then five days later you rule, would that mean service  
24 would be cut off? We don't think that would be  
25 acceptable. We need a meeting, of some sort, of all

**EXHIBIT "C"**

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

REC'D TN  
REGULATORY AUTH.

In Re: *Second Complaint of Discount Communications, Against BellSouth  
Telecommunications, Inc.*

CLERK OF THE  
EXECUTIVE SECRETARY

Docket No. 00-01151

**BELLSOUTH'S RESPONSE TO DISCOUNT COMMUNICATIONS'  
MOTION TO REQUIRE BELLSOUTH TELECOMMUNICATIONS,  
INC. TO CONTINUE SERVICE PENDING RESOLUTION  
OF THIS PROCEEDING**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits that the Tennessee Regulatory Authority (the "Authority") should deny Discount Communications' ("Discount") Motion to Require BellSouth to Continue Service Pending Resolution of this Proceeding (the "Motion"). The Authority should not order BellSouth to continue providing service if Discount is not paying its bills.

On January 5, 2001, Discount filed its Motion, which as will be shown below, erroneously characterized the January 4, 2001 oral deliberations of the United States Bankruptcy Court. On January 9, following a regularly-scheduled Authority Agenda Conference, the Directors discussed the Motion and posed questions to counsel for the parties, including questions regarding the status of the bankruptcy proceeding ATM/Discount Communications, Inc. had initiated on November 2, 2000.<sup>1</sup> During these discussions, BellSouth proposed that no action

<sup>1</sup> In its Motion, Discount claimed that last year it merged with Air Time Management, Inc. and that the Staff advised that Discount need only file a name change request with the Authority rather than a petition to transfer its resale certificate. (Motion, p. 2). On February 14, 2000, Mr. Edward Hayes notified the

services "while the Staff is investigating Discount's complaint." Otherwise, Discount will simply file a new complaint at such time as the Staff finishes its investigation of the most recent complaint. This cycle simply should not be allowed to continue, particularly where it is undisputed that substantial amounts remain unpaid. Assuming BellSouth terminates Discount's services, BellSouth will voluntarily agree to accept Discount's customers based on the following:

BellSouth will assume responsibility for providing service to the existing customers of Discount on the date that BellSouth terminates service to Discount. Beginning on that date, BellSouth will begin changing the service records of Discount's customers to reflect BellSouth as the service provider. Although this process may require several weeks to complete, the change will be effective on the date that BellSouth terminates service to Discount, and BellSouth will not bill Discount for any services to these customers after this termination date. Service to Discount's customers will not be interrupted, and BellSouth will waive the \$20 reconnection charge that is normally applied in this situation. As customers are switched, BellSouth will send a letter to each customer explaining the change in their service provider and advising the customer that they are not obligated to keep their BellSouth service, but are free to choose any other service provider.

Once this conversion is completed, BellSouth will treat these customers in accordance with current tariffs. Any customers with an outstanding balance from a previous BellSouth account will be allowed up to one year to address this outstanding balance under the terms and conditions of BellSouth's Tariff A2.4.3.1. Other matters, including credit history information, deposit requirements (if any), and documentation to qualify for Lifeline service will be addressed under the terms and conditions of the applicable BellSouth tariffs and as required by federal and state law.

BellSouth's proposal is a good faith attempt to address the Directors' concerns with respect to the provision of service to Discount's customers at such time as BellSouth may terminate Discount's service. BellSouth's proposal will